

**LAKE COUNTY PLANNING BOARD**  
**September 12, 2012**  
**Lake County Courthouse, Large Conference Room (Rm 317)**  
**Meeting Minutes**

**MEMBERS PRESENT:** Bob Kormann, Steve Rosso, John Fleming, Janet Camel, Jerry d'Aquin, Rick Cothorn, Roland Godan

**STAFF PRESENT:** Joel Nelson, Karl Smithback, Lita Fonda

Bob Kormann called the meeting to order at 7:02pm. He welcomed Roland Godan and invited him to say a few words about himself, which Roland did.

Regarding the July 11, 2012 meeting minutes, Steve noted near the bottom of page 9 that should read "...you couldn't latch onto it with your pickup..." rather than '... you didn't latch onto it with your pickup...' **Motion by Steve Rosso, and seconded by Rick Cothorn, to approve the July 11, 2012 meeting minutes as corrected. Motion carried, all in favor.**

Regarding the August 15, 2012 minutes, Bob pointed out that on pg. 2 in the 4<sup>th</sup> line from the top, 5.000 should be 5,000. **Motion by Jerry D'Aquin, and seconded by Rick Cothorn, to approve the August 15, 2012 meeting minutes as corrected. Motion carried, 5 in favor and 2 abstained (John Fleming, Steve Rosso).**

**ARNOLD SECOND OR SUBSEQUENT MINOR SUBDIVISION**

Karl Smithback presented the staff report. (See attachments to minutes in the Sept. 12, 2012 meeting file for staff report and letter of comment.) Karl pointed to the letter of comment from Dale Becker of the Tribal Wildlife Management Program, which was received after the staff report was written. Karl suggested that the Board consider incorporating a condition that would require adopting some of the language suggested by Dale Becker into the wildlife covenants. He thought those covenants touched on most of this, but it would be good to make sure to incorporate the language suggested by Tribal Wildlife.

Janet checked if a Cultural Clearance was received from the Tribes. Karl clarified that they did receive this. Janet summarized that the Cultural Clearance typically included a requirement that they would be notified prior to excavation so they could be ~~inaudible~~ at the site during excavation if necessary, and see it [inaudible]. Karl recalled they said there was no immediate concern. He referred to the middle checkbox. Janet explained that the middle one usually required that consultation be maintained with their office during excavation. That should be a condition, in case something is unearthed. Karl agreed.

Janet asked if a condition stated they had to work with the Irrigation Project regarding the proper culvert sizing when they crossed the C Canal. Karl replied there was a permit for that.

Steve asked Karl to elaborate on the enforcement of the covenants. A provision in the covenants was included here on enforcement, but Karl had brought that out as something that needed to be added. Karl explained he was referring to the attached covenants, related to wildlife and dated

May 10. This was attachment #5. He thought the intent was there in the language, but it didn't carry the weight of regulatory standards and might need some fixing up so they could enforce it. Steve said if the enforcement clause on attachment 4 was duplicated on attachment 5, that would be okay. Was that what Karl was looking for? Karl responded there was more to it than that. He gave an example regarding haying and birds. It was thorough, but what was written was more suggestive. Maybe it could be turned into standards. More enforceable language could be used. Steve referred to what was in the standard code. Karl thought they would add that in as well. He thought they'd probably adopt standard language from other covenants.

John requested clarification on the last line on pg. 2 and at the top of pg. 3. Karl explained there were 4 total development rights. One was spoken for with the existing dwelling. The planners recommended that the 3 building rights be allocated to specific parcels so it didn't get confusing in the future.

Janet returned to the wildlife covenants in attachment 5. She noted for the 9<sup>th</sup> paragraph that a Tribal Recreation and Hunting permit would be required for game bird hunting, if it were allowed.

Jerry checked that there were still 3 more development rights if the buffer zones were taken into consideration. Karl said there were 2 separate issues. Further subdivision review would be necessary in order to exercise those development rights. That would be evaluated at that time, based on the depiction of the plat in relation to the setbacks. It was conceivable. Jerry said Karl was saying 'may'. By allocating those development rights, you implied or asserted that they existed. They may not exist with the current setbacks. Karl understood what Jerry was getting at. It worked similarly with the Density map. If you had a 40-acre parcel in a 20-acre density area, you had 2 development rights, but it didn't mean you could subdivide. It might be similar here, but they could change the language.

Jerry recalled previous discussion about the \$100 donation per lot for fire. Bob recalled there was going to be some talk with the fire chiefs.

Roland asked about contradictions. With height restrictions, on pg. 21 in 1.d.iv, an 'average' height restriction of 30 feet was mentioned. Further on, in the declaration of protective covenants, it just said 30 feet. He asked if the average meant you could put up a 100-foot building up and a 5-foot building. Karl replied that wasn't the practice of the County. They had a set way of determining average building height, based on an individual structure, not several structures on a property. Steve asked if that method needed to be referenced. Was it defined in the Density map? Joel answered no. Janet thought height was a condition of fire department responsibility and if they had the ability to fight a fire on a 30-foot high building. That was her understanding over 23 years why there was a limitation on building heights. Some departments didn't have the equipment to fight roof fires, for example, above a certain height.

Karl asked what this Board had done in the past. He thought this was pretty standard for subdivision approvals. John said it was the average height of a building. You could have high and low points. You could build on a slope and average the grade somewhere in the house. Steve said you measured from the ground level on each side of the building to the peak.

Generally that was described in the zoning regulations for areas with zoning, and that regulation would be referenced. Karl said they wouldn't want to reference zoning regulations, and only certain districts had that definition in the building height definition section. For consistency, they employed the same method in the other districts that lacked a definition but use the term, for consistency. Joel said they hadn't incorporated all of the administrative language of zoning conformance into building notification and that program. It was pretty simple. When people came in for a permit, they would have to demonstrate that the building was less than 30 feet in average height. Steve asked if that procedure was written down for determining average building height. Joel said they were prepared to hand a sheet about how to measure average building height to those who asked.

Janet commented that covenants for her subdivision said maximum building height of 25 feet. She'd been told this was what the fire department could handle. She recommended that the fire marshals be contacted, possibly from the one of the more rural departments, for future subdivisions to find out what they were equipped to handle. The height in the Density areas could be set at that height. She thought Polson was the only fire department with a ladder truck. She wanted to look out for protecting the residents.

Roland described the cat and dog section as being all over the spectrum as to what to do with a dog. One part said to keep the dog at your side. Another said to keep the dog in an enclosure. He suggested that the section be standardized, as far as what it meant to contain your dog. Joel checked that this was perpetual condition #30 on pg. 31. Roland pointed to other references throughout the document, and attachment 4 of the declaration of protective covenants. Domestic pets were to be confined to their tract unless on a leash with the owner. 'Confined' was a broad term. Joel stated that was from the applicant's proposed covenants. The previous one was a standard condition that the staff recommended for this type of subdivision, so they wouldn't be the same. They could file the proposed covenants as is, but they were also subject to the perpetual condition that the County proposed to place. Roland thought the covenants submitted did a good job of being thorough but there were lots of generalization-type terms that were unenforceable. 'By the owner's side', for instance, was subject to interpretation and unenforceable. Karl replied they intended to address that with a condition about enforceable language. That was with regards to #5. With regards to #30, Tribal Wildlife and some of the other State agencies had suggested the language to staff. Staff incorporated into the perpetual conditions at their suggestion. There was a little bit of conflict, but they were also distinct documents.

Roland turned to 11.c in attachment 4. He thought there should be a balance between unencumbered use of the land and common sense and consideration for other people. He thought it was reasonable to have a couple of apple trees on a big chunk of land. A commercial orchard would be another thing. He wouldn't like to be told that he couldn't have an apple tree if he were the landowner. Bob replied that he might not like it as a landowner, but Bob had a bear in his garage last night after dog food. He thought anything to keep from attracting bears to unnatural sources was imperative, especially in an area like the one under discussion, which had a high bear concentration. This went along with having a lakeshore buffer where there had to be some rules. Those bears would be there, with 2 apple trees on 60 acres, especially this time of year. Janet added this was especially true in the Ashley Creek area. It was a really high bear

concentration area on the Reservation. In fact, there were 3 grizzly bears [inaudible] on the Reservation east of Hwy 93. Zone 1, the highest activity area of grizzly bears, incorporated a lot of this area. This was the area they wanted to protect the most, and minimize animal attractants as much as possible.

Roland said at one point it stated all garbage was to be stored indoors and underneath that, in another section, it said garbage shall be stored in either secure bear-resistant containers or indoors. Jerry said it could be either one. These were the seller's covenants. Roland asked if the seller's covenants were the basis for the final. Steve pointed to this on attachment #5. He didn't know that the Board was in a position to evaluate these covenants. They had to make sure the covenants were at least strong enough to reflect the requirements in the subdivision regulations with these facts of findings and conditions. The covenants were allowed to go beyond that, and were amendable by the property owners of the subdivision in the future. Should they evaluate the covenants strongly or not, with respect to approving this subdivision? Karl thought they needed to be contemplated in light of the information of the staff report. If there was something about where garbage should go, if it was conflicting, but not in such a way that it became contrary to the intent of the Board's approval or recommendation on the applicant's proposal, then he didn't think it was of issue. They could certainly go through them prior to meeting with the Commissioners, and dress them up a bit. That was kind of the intent of that condition. Roland said he was coming from an advocacy position for the potential buyers. As a seller, you would put in Utopian things to affect the ability to sell and probably to provide a better product. At some point, he thought you needed to represent the actual buyer. Unnecessary covenants would cost money to enforce.

John thought the role of the Board was to help the landowner achieve what she was trying to accomplish. She would design a project. In the future, somebody would come in and want to buy some of this or not. If the place wasn't attractive to somebody, then they didn't have to buy it. They were here to help her achieve in a legal and enforceable way what she was trying to achieve. Joel said they tried to stay consistent with the perpetual conditions. The applicant could propose her language in her covenants as she would like it. Even if there were wiggle room within that, the wiggle room didn't go outside the perpetual conditions.

Jerry asked if the buffer zones were measured from Ashley Creek, which wasn't in existence. Karl thought they'd go with the supplemental plats, if it came down to it. A defined channel still existed, although nothing had been flowing in it. A section of the subdivision regulations alluded to the idea if it wasn't to prevent flood damage, the regulation standards could also be implemented to preserve the habitat that generally went hand-in-hand with that area. Even though there wasn't a creek flowing through it, it was still important to have the setbacks. If somebody really wanted to question where those setbacks were, they could look back in the file, which had them delineated. Jerry said his point was if you wanted to protect the habitat, should it be delineated separately or addressed as a fact that they know Ashley Creek didn't exist, but this was the area that the seller wanted to protect in perpetuity. Joel said that would be shown on the final plat.

Steve returned to the covenants. He read from condition #13. The staff report described the enforceable language and the wildlife thing. Maybe they needed to add in there that the 2 sets of

covenants needed to both say the same thing, and the contradictions needed to be cleaned up. Jack Duffey thought perhaps they could be rolled into one. Karl thought that made sense. Condition #13 was a bit nebulous because he knew the group would be sculpting.

Alexa Arnold spoke on behalf of her application. She thanked the group for their time and attention to address her request. She respected their comments to improve her application. She was an amateur, as far as writing the covenants. For the wildlife issue, and bears in particular, she thought the setbacks away from the Ashley Creek drainage were important because the bears come down into that area. She wouldn't want to build a house close to that. She described some of the consistent bear behavior. She didn't have food or garbage out. She thought the fruit trees were an issue. She was very concerned about wildlife, and wanted to protect those things and water quality. Steve asked if she was open to staff help to rewrite some of the covenants and enforcement. She said that she was. Steve complimented Alexa on her work. He thought it was wonderful to see someone who had taken this on herself and who had done a good job of it. Alexa noted she was retired. This was her winter project.

*Public comment opened:*

Kathy Klinge: She and her husband own property kitty-corner to the subject property. She wanted to protect the wildlife. They got a grant a few years ago from DNRC to develop the bottom part of their property into wetlands and ponds for duck and geese habitat. At the time of the improvements to the property, the issue came up that they shared a water easement. Her concern centered on the shared water easement. It was off of Ashley Creek, which no longer existed, but the language was still in there. At the time, she heard that should they sell the property, to make sure that the easement returned back to her and her husband.

Alexa A: She asked Kathy to explain the background regarding the spring.

Kathy K: They had several hot springs on their property, which ran year-round. A couple of them dried out in the summer. In the fall and winter, they ran pretty steadily. A lot of times, it was the only open water on that side of the valley. Her husband, an avid bird hunter, worked out a plan with DNRC and got a grant to put 4 ponds at the bottom of the property that were fed by these springs. The water didn't drain onto Alexa Arnold's property. It did drain onto another neighbor's property. The 2 springs closest to Alexa's property were dry in the winter. They provided habitat, open water for the birds, [inaudible]. Her concern was they shared water rights off of that property. She didn't want someone else coming in and disturbing the habitat to put in pumps and things and to take the water off her property.

Alexa A: She wasn't aware of that. They were told of the springs. She owned 80% of the water rights to that. Since it wasn't on her property, she didn't know. The State of Montana sent a letter some years ago to update the status of water rights. Brad Klinge came over and was very upset because he made these ponds and realized the water rights were deeded to Alexa's property. The reason was this was part of the Ruth and Bud Mahle's ranch, so there were [inaudible] so Bud Mahle deeded 80% of the water rights to his springs to her land, and 20% to the Klinges. She didn't realize this. She told [Brad] she didn't want somebody taking water out and using it for irrigation. Since he'd done the ponds, she said it would be fine to leave it that

way, and that if there ever was a sale of the land, they could deal with that. She thought she had contacted the State. They asked her what percentage. She said 50% as long as it was done for wildlife. This was unusual. Most people didn't give away water rights. She was concerned that there was sprinkling going on.

Kathy K: She said 2 of the ponds were totally dry from April to September or October. There wasn't enough water in the springs to sustain them in the [inaudible].

Alexa A: She hadn't had a chance to talk to the Klings about that.

Bob K: He wasn't sure that the Board needed to be involved in this particular negotiation.

Karl S: It sounded like a private matter.

Bob K: There was something there about water rights. That wasn't part of the Board's process, although he appreciated them bringing that up. He checked for other comment from Kathy or the other member of the public present.

*Public comment closed.*

Bob summarized the Board had the variance to deal with. For the main motion, the Board could consider including a condition about the Tribal Wildlife and wildlife attractants letter from Dale Becker, and also a condition on the Tribal historic preservation. Janet noted that Tribal historic preservation was resolved with perpetual condition #29 on pg. 31 of the staff report. Bob commented on attachment 5 they needed to include hunting and recreation [inaudible] to get it in there.

**Motion made by John Fleming, and seconded by Rick Cothorn, to accept the staff recommendation to grant the variance.** Janet offered an additional condition that the flood irrigation would not impact the drainfield area or the alternate drainfield area. There was agreement from the Board that this was an excellent catch. **[Amended] motion carried, all in favor.**

**Motion made by Steve Rosso, and seconded by John Fleming, to recommend approval with staff recommendations and the inclusion in condition #5 of language that a Tribal permit is required for hunting in those covenants, and that the comments from Dale Becker be included in the condition.** Jerry thought the Tribal issue was already included in some of the prior language discussing no outside garbage and proper bear containers. As long as the 2 were properly coordinated, he thought it was covered. Janet didn't think compost and birdfeeders were mentioned. **Motion carried, all in favor.**

Jack Duffey asked how the Dale Becker comments would be incorporated. Bob suggested talk with Karl. Wording about compost and birdfeeders needed to be included.

### **OTHER BUSINESS**

Lita Fonda said she had calculations mentioned at a previous meeting on permit turnover time for April, should anyone like to see it after the meeting. (See attachment to minutes in the Sept. 12, 2012 meeting file.)

Joel thought there would be an item or items next month.

Bob expressed an observation that the Board seemed to be digesting subdivisions more thoroughly than in the past, using more time. He was concerned about time when things were busier. Board members and staff touched on this.

John and Janet touched on flood irrigation and the importance of natural drainage.

Roland asked if it was possible to receive staff reports electronically.

**Motion made by Janet Camel, and seconded by John Fleming, to adjourn. Motion carried, all in favor.** Meeting adjourned at 8:15 pm.